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LEGAL ASPECTS OF METROPOLITAN SOLUTIONS FOR PROBLEMS OF RACIAL ISOLATION.

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PUBLIC SCHOOL SYSTEMS IN THE UNITED STATES HAVE BEEN ORGANIZED IN DIFFERENT WAYS, BOTH WITHIN THE STATES AND FROM STATE TO STATE. IN SOME CASES SCHOOL DISTRICT STRUCTURE IS COTERMINOUS WITH LOCAL GOVERNMENTAL UNITS AND IS "DEPENDENT" ON THEM. HOWEVER, 78 PERCENT OF PUBLIC SCHOOL ENROLLMENTS ARE IN "INDEPENDENT" SCHOOL DISTRICTS WHOSE BOUNDARIES ARE DIFFERENT FROM THE GOVERNMENT UNITS. THE RECENT TREND TOWARD REORGANIZATION AND CONSOLIDATION OF INDIVIDUAL SCHOOL DISTRICTS HAS PRIMARILY AFFECTED RURAL AREAS, BUT SOME LARGE METROPOLITAN AREAS HAVE ALSO REDUCED THE NUMBER OF LOCAL SCHOOL SYSTEMS. REORGANIZATION METHODS HAVE BEEN CONTROLLED BY THE TYPE OF LEGISLATION APPROVED BY THE STATE LEGISLATURES, WHICH MAY BE MANDATORY, PERMISSIVE, OR SEMIPERMISSIVE. ONE IMPORTANT DETERMINANT OF REORGANIZATION IS THE NATURE OF THE FINANCING IN THE SCHOOL DISTRICT, WHICH MAY OPERATE TO EITHER ENCOURAGE OR DISCOURAGE CONSOLIDATION. STATE CONSTITUTIONAL PROVISIONS ALSO AFFECT LOCAL EFFORTS TO REORGANIZE BECAUSE CONTIGUOUS LOCALITIES MAY HAVE VARYING TAX BASES AND DEBT LIMITS. CONSOLIDATION METHODS INCLUDE MERGERS OF CENTRAL CITY AND SUBURBAN SCHOOL SYSTEM, ANNEXATION BY CITIES OF OUTLYING AREAS, AND EXTENSION OF CITY SCHOOL DISTRICT BOUNDARIES WITHOUT CHANGING GOVERNMENTAL JURISDICTIONS. AN APPENDIX CONTAINS LEGISLATIVE PROVISIONS FOR REORGANIZATION IN CALIFORNIA, ILLINOIS, INDIANA, MICHIGAN, NEW YORK, AND PENNSYLVANIA. THIS PAPER WAS PREPARED FOR THE NATIONAL CONFERENCE ON EQUAL EDUCATIONAL OPPORTUNITY IN AMERICA'S CITIES, SPONSORED BY THE U.S. COMMISSION ON CIVIL RIGHTS, WASHINGTON, D.C., NOVEMBER 16-18, 1967. (NH)

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A. Organization of Public School Districts in the United States

1. Introduction

The organization of public school systems in the United States varies from state to state. The 1962 Census of Governments found that in more than 20 states local responsibility for public schools was vested in local school districts which operated as independent government units. In other states, public schools in some areas were operated by independent districts; while elsewhere in the same state, some other type of local government control prevailed. In the District of Columbia and four states public schools were administered by school systems which were agencies of county, city or town governments, or of the state. 1/

1/ U.S. Bureau of the Census, Public School Systems in the United States, 1961-62, Preliminary Report No. 3 (1962), p. 1. See also Advisory Commission on Intergovernmental Relations, Performance of Urban Functions: Local and Areawide (1963), pp. 61-62.

This Census also showed that in 1962 there were 6,605 public school systems operating in those areas designated standard metropolitan statistical areas (SMSA's).[2/] These districts were administered in a variety of ways; 601 were administered by State, county, municipal or township governments and 6,004 by independent school districts.[3/]

The pattern of school district organization varies greatly from state to state. The Los Angeles-Long Beach SMSA, for example, has 142 individual school districts.[4/] Yet, the entire State of Hawaii has only one school district and the State of Maryland, 24.[5/] Nebraska and South Dakota have between 2,000 and 3,000 each.[6/]

To add to the complexity of the problem these school districts often are not coterminous with other local government units.[7/] Detroit, Michigan, is located in the SMSA encompassing Wayne County. This County has 43 separate school districts, 27 enrolling more than 3,000 persons.[8/] Only 4 of these districts are coterminous with other local government units.[9/]

2/ A standard metropolitan statistical area is defined by the U.S. Bureau of the Census as a single county containing a central city of at least 50,000 or "twin cities" with a combined population of 50,000, or a group of counties which have substantial urbanized areas contiguous to the central city. The number of SMSA's in the 50 states was 212 in 1960 and 224 in 1965. The data in this report uses the 212 SMSA's since statistical material has not yet been prepared by the Census Bureau on the schools in the 12 SMSA's created since 1960.

3/ Public School Systems in the United States, 1961-62 supra at 2.

4/ U.S. Bureau of the Census, Census of Governments: 1962, Local Government in Metropolitan Areas, Vol. V (1964), Table 4 at 38-39.

5/ Keppel, The Necessary Revolution in American Education (1966), p. 83. See also U.S. Commission on Civil Rights, Racial Isolation in the Public Schools (1967), fn. 261 at 182.

6/ U.S. Bureau of the Census, Census of Governments: 1962, Government in California, Vol. VII, No. 5 (1964), Table 34 at 72-3.

7/ The 1962 Census of Government found that of the 6,004 independent school districts in the SMSA's, 1,476 were coterminous with other government areas and 4,528 were noncoterminous. See also Performance of Urban Functions: Local and Areawide supra at 63.

8/ U.S. Bureau of the Census, Census of Governments: 1962, Government in Michigan, Vol. VII, No. 22 at 36 and Local Government in Metropolitan Areas supra at 71.

9/ Local Government in Metropolitan Areas supra at 70.

School systems which have boundaries coterminous with counties, cities, or townships of which they are a part are considered "dependent." This means that whether their boards are elected or appointed (by the mayor, the county board or other authority), they cannot levy taxes or issue bonds without approval by the general local government. There are approximately 2,300 dependent school systems. 10/

The 25,000 "independent" school districts now in existence account for approximately 78 percent of public school enrollments. Their boundaries are seldom coterminous with other units of government and their boards are usually elected at large -- often in separate elections and usually on "nonpartisan" ballots. These districts levy property taxes and issue school bonds subject to provisions of state law without much reference to actions of other local governments. 11/

10/ Committee for Economic Development, Modernizing Local Government (1966) p. 31. Hawaii maintains such a system statewide and all or most of the pupils in Connecticut, Maine, Maryland, Massachusetts, North Carolina, Rhode Island, Vermont and Virginia attend dependent schools. In New York, New Jersey, Pennsylvania and Wisconsin over one-third of the pupils are in such schools.

11/ Modernizing Local Government supra at 31. More than 3,000 of these independent school districts do not in fact maintain schools either because they have no children of school age or because they send their few school-age children to other districts on a tuition basis. Id.

2. Trend Toward Reorganization and Consolidation

In recent years there has been a marked reduction in the number of individual school districts.[12/] Consolidations forced by state action, either mandated or encouraged by state school aid formulas favorable to consolidation, have reduced the number of independent districts by 75 percent since 1942. The number of school systems in the counties or parts of counties constituting the 212 SMSA's in the 1960 Census dropped from about 15,400 in 1942 to 7,900 in 1957 and 6,605 in 1962.[13/]

Most of this consolidation of districts has taken place in rural areas. The consolidation movement grew out of the population migration from farm to urban areas.

> Population migration resulted in declining enrollment, smaller classes, poorer use of staff, and ever higher per-pupil costs year after year. ... The most striking result of the consolidation movement was the near elimination of the one-teacher school as an important part of rural school organization. 14/

12/ In 1932 there were 127, 530 school districts; in 1955 the number was 59,270 and in 1962 it was 37,025. Performance of Urban Functions: Local and Areawide supra at 63. See also American Association of School Administrators, School District Organization (1958). Chapter VIII, "Legislation for School District Reorganization" has a somewhat dated but still relevant discussion.

13/ Performance of Urban Functions: Local and Areawide supra at 63.

14/ The Necessary Revolution in American Education supra at 83.

There is a great variation in the way in which states have reduced the number of school districts. Some states have wiped out existing districts either by constitutional amendment or statute and substituted new districts based mainly on county boundaries.[15/] Other states delegated the authority to reorganize districts to the state agency and a county agency jointly without requiring them to refer the issue to a popular vote.[16/] In these states, the county was compelled to act within a specified time and the state agency was given authority to approve or disapprove. The New England States have passed legislation abolishing existing districts and substituting new ones based chiefly on townships and cities. Because some of these districts have proven to be too small, however, several of these states have taken further steps to reduce the number of districts.[17/]

School systems in the large metropolitan areas have participated to a limited extent in this reduction in the number of school districts. School systems in the 212 SMSA's, while representing only 18 per cent of the school systems in the country, had 59 percent

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15/ These states were: Maryland, Louisiana, West Virginia, Florida, Nevada, Alabama, Tennessee, Kentucky, Utah, Virginia and Georgia. Performance of Urban Functions: Local and Areawide supra at 64.

16/ These states were North Carolina, New Mexico, South Carolina and Mississippi, Id.

17/ Id.

of the pupils enrolled. These metropolitan areas also have the major portion of all relatively large school systems (those enrolling 1,200 pupils or more) and the bulk of public school enrollment within the SMSA's is accounted for by these systems. There are, however, large numbers of small school units in these areas -- 2,638 with fewer than 300 pupils each in the 1961-62 school year.[18/]

In a few states every city has been combined, for school purposes, with the remainder of the areas in the county in which it is located.[19/] In Maryland, Utah and Louisiana all cities and counties are part of the same administrative unit except in a few instances. San Francisco city and county form a single school district, for example, while Baltimore is the only exception to this organization in Maryland.[20/]

The voters of Dade County (Miami) Florida, approved consolidation of ten school districts into a single, countywide system in 1945 and, more recently, a single countywide district was formed in Mecklenburg County (Charlotte) North Carolina.[21/]

18/ Local Governments in Metropolitan Areas supra at 2-3.

19/ Florida, West Virginia and Nevada follow this pattern of organization. School District Organization supra at 282-83.

20/ Id. at 282.

21/ Performance of Urban Functions: Local and Areawide supra at 81.

B. School District Reorganization

1. Types of Legislation

The legislatures in all of the states have provided for a variety of ways in which changes in school boundaries can be affected. This legislation can be broadly classified into three general types:

(a) Mandatory Legislation. This type of legislation reorganizes school districts by direct legislative action without referring the action to the voters for approval. For example, West Virginia by one direct legislative act abolished all existing districts and established the county as the local unit for organization, administration and financing the schools.[22/]

Another type of mandatory legislation delegates authority to reorganize districts to state agencies without voter approval. Mississippi, for example, gave the authority to county boards of education and required them to reorganize the districts in their counties in a way which would meet the approval of the State Finance Commission.[23/]

Still other types of mandatory legislation require the abolition of districts under a certain size by delegating authority to county committees or state agencies to annex to adjoining districts those districts falling below stipulated limits with respect to such matters as pupil enrollment and average daily attendance.[24/]

22/ School District Organization supra at 168.

23/ Id. at 160-70. As a result of legislation the 1417 local districts that existed in Mississippi in 1953 were reorganized into 151 districts.

24/ Id. at 175-75.

(b) Permissive Legislation. Generally this legislation does not require any approval at the county or state level. Such legislation frequently does not go beyond permitting voluntary reorganization of districts. Local school board action or petitions signed by a specified number or percent of the electors in a local area may start the initial procedure for the joining of two or more districts before final approval or rejection by the voters.[25] A number of states have a variety of laws designed to fit certain situations and permitting districts of varying sizes, classes and types to be annexed or consolidated but do not provide for well-planned district reorganization.[26]

(c) Semipermissive Legislation. This type of legislation requires that essential preliminary steps be taken in preparing plans and proposals for reorganization and in submitting them to the voters for approval or disapproval. Most of the state laws which provide for this type of reorganization include detailed procedures to be followed at state, county and local levels.[27]

25/ Id. at 175.

26/ Id.

27/ Id. at 179-80.

2. Constitutional Obstacles to School District Reorganization

School district financing plays an important role in encouraging or discouraging reorganization. Financial considerations were very important, for example, in the movement to consolidate the predominantly rural school districts.[28/]

In some states financial incentives for reorganization were provided by the state. In Illinois, for example, which reduced its number of school districts from almost 12,000 in 1955 to less than 2,500 in 1960, state aid was denied to districts below a certain size.[29/]

Other states which permit reorganization have financial provisions which tend to retard consolidation or other reorganization. In Michigan, for example, financial support given to small schools, allowances for tuition of nonresident pupils, and the payment of transportation costs for pupils going to school outside of their own district have made it less attractive to reorganize. Because of state aid formulas, moreover, reorganized districts probably would receive less aid than the total received by all of the constituent districts.[30/]

28/ School District Reorganization supra at 212-13.

29/ Id. at 233-34.

30/ Id. at 224.

In addition, state constitutional provisions often create financial problems which affect possible school district reorganizations, by establishing different tax bases between communities of different sizes. These differentials would have to be resolved before any of the methods for combining school districts could be utilized, particularly in those states in which reorganization of districts is voted upon by the taxpayers in the affected areas.

The New York Constitution, for example, places percent limitations on amounts to be raised by real estate taxes for local purposes. The amount to be raised by property taxes in any county cannot exceed an amount equal to one and one-half percent of the average full valuation of taxable real estate of the county; the amount in any city or village is two percent.[31/] The rate in any school district which is coterminous with, within or partly within a city of less than 125,000 is one and one-fourth percent;[32/] and the rate for New York City is two and one-half percent.[33/] The Constitution does provide that if there is consolidation of a school district located within or partly within or coterminous with cities of less than 125,000 people with any one or more school districts, the legislature can prescribe a limitation not to exceed two percent for the consolidated district.[34/]

31/ N.Y. Const., art. VIII, § 10(a)-(d).

32/ N.Y. Const., art. VIII, § 10(e).

33/ N.Y. Const., art. VIII, § 10(f).

34/ N.Y. Const., art. VIII, § 10(e).

The Michigan Constitution, by way of contrast, provides simply for uniform tax limits for all property in the state and provides further that in any school district which extends into two or more counties, property taxes at the highest rate available in the county containing the greatest part of the geographic area of the district may be imposed.[35/]

An additional problem may arise from debt limitations imposed by state constitutions. Schools districts can contract indebtedness for school purposes such as capital improvements or the building of new schools. In most jurisdictions the indebtedness is contracted in anticipation of taxes levied and to be collected. State constitutions often put restrictions on the amount of indebtedness school districts can incur based on their size. In New York, for example, the state constitution provides that each city of less than 125,000 people, each town, and each village has a limitation which is not to exceed an amount equal to seven percent of the average full valuation of taxable real estate. Any school district coterminqus with or partly within or wholly within a city of less than 125,000 has a limit of 10 percent.[36/]

35/ Mich. Const., art. IX, § 6. See also Ill. Const., art. IX, § 12 and Ind. Const., art. 13 § 1.

36/ N.Y. Const., art. VIII, § 4.

Since the debt limitation is based on the valuation of taxable real estate and the amount which can be raised by real estate taxes in a particular city, town or school district also is limited by the state constitution, a difficult financial problem is posed. For example, New York City is limited in the amount which it can raise by real estate taxes to two and one-half percent of the average full valuation of taxable real estate and the State Constitution limits the indebtedness which it can incur to 10 percent. A small school district outside of New York may have a tax limit of 2 percent and a restriction on indebtedness of seven percent.[37/] If these two school districts were to combine the smaller district might face a tax increase to support the raised debt limitation, which probably would be incurred in building new schools or improving the existing ones.

3. Methods of School District Reorganization

There are several approaches which can be used to effect school district reorganization within the broad categories of legislation discussed in a preceding section of this paper. Assuming particular state legislation would permit it, metropolitan school systems could be achieved through a merger of the central city and the suburbs into a single administrative unit for schools and perhaps for other functions as well. This form of organization generally has been used in combining all of the municipalities in a particular county into a single administrative unit as, for example, in Dade County (Miami) Florida.

37/ Id. See also Pa. Const., art. IX, § 8.

Annexation of outlying territory also has been a traditional means of enlarging or changing city boundaries. In recent years, however, annexation has been used in relatively few urban areas. During the period 1950-60, only 22 of the country's largest 130 cities annexed territory to their respective areas and in only 12 of these instances was the territory added to the city as much as 60 square miles. In New York, New Jersey, Massachusetts, Michigan, Pennsylvania, and Connecticut, for example, no territory was added to any of the major cities. 38/

Another approach to city-suburban reorganization is that of extending the boundaries of a city school district without extending municipal boundaries. This differs from annexation since only the suburban schools become a part of the city and a school district whose boundaries are not coterminous with the city is created. The Los Angeles City School District, for example, includes within its boundaries the city of Los Angeles and a number of other separate jurisdictions. 39/

Whether or not any of these methods would be feasible in a particular jurisdiction would depend, of course,,on a wide variety of factors, including legislation in the particular state. 40/ The Appendix discusses such legislation in California, Illinois, Indiana, Michigan, New York and Pennsylvania.

38/ The Advisory Commission on Intergovernmental Relations, Governmental Structure, Organization and Planning in Metropolitan Areas (1961), pp. 21-24.

39/ School District Reorganization supra at 286-89.

40/ When considering particular state legislation the interrelationship between the statutory provisions discussed above and the constitutional tax and debt limitation provisions discussed previously should be noted.

4. Alternatives to Reorganization

As an alternative to reorganizing school districts, it is possible for school districts to enter into cooperative agreements and contracts. Several states, including California, Michigan and New York, have specific constitutional authorization for interlocal cooperation. 41/

The absence of specific constitutional authorization has not been a major factor in deterring this type of cooperation, however. 42/

Michigan also has a statute which may serve as a useful model. It provides:

> Any municipal corporation shall have power to join with any other municipal corporation or with any number or combination thereof by contract or otherwise as may be permitted by law for the ownership, operation, or performance ... of facilities or services. 43/

In 1965 all but five of the 221 units of local government in Southeast Michigan (encompassing the Detroit SMSA) were involved in one or more forms of interlocal cooperation in performing their functions. None of these agreements involved public educational facilities or programs. 44/

41/ Calif. Const., art. 11 § 4-112; Mich, Const., art. 7 § 28; N.Y. Const., art. IX § 1(c).

42/ See Advisory Committee on Intergovernmental Relations, A Handbook for Interlocal Agreements and Contracts (1967). This pamphlet provides models for these agreements and also provides an extensive discussion of problems which might arise in their use. See pp. 5-8.

43/ Mich Stat. ann., tit. 5 § 5.4082 (1959).

44/ A Handbook for Interlocal Agreements and Contracts supra at 12, 33.

In Southeastern Pennsylvania, however, (the City of Philadelphia and the surrounding counties)there was a total of 693 interlocal cooperative agreements covering both formal or written compacts and informal agreements reported in 1961 and 347 of these agreements involved school districts, authorities and municipalities.[45/]

A more recent survey in 1965 reported that the City of Philadelphia had more than 25 formal agreements with other jurisdictions involving functions and services such as public health, sewage disposal, streets and highways. None of these agreements involved schools.[46/]

45/ Id. at 12.

46/ Id.

APPENDIX

Legislative Provisions in California, Illinois, Indiana, Michigan, New York, and Pennsylvania Relating to Reorganization of School Districts.

California

California reorganized its education law in 1963 to provide for a system of optional reorganization of school districts by electors. The California law now provides that the organization or reorganization of school districts can be initiated by a petition signed by at least 25 percent of the registered voters in any school district affected. The law provides for the organization and reorganization of school districts under the jurisdiction of different counties;[1/] the creation of new districts;[2/] and the formation of new districts by combining existing districts.[3/] In addition, there are provisions for annexation[4/] and consolidation of school districts.[5/] The law also provides that every city organized before September 11, 1957, will constitute a separate school district unless otherwise prescribed in its original charter.[6/]

1/ Calif. Ed. Code §§ 1681-1686 (Supp. 1966).

2/ Calif. Ed. Code §§ 1972, 1992, 1993-1996 (Supp. 1966). The Code provides that the State Board of Education shall establish minimum standards for the formation of districts which it shall apply in approving or disapproving the formation of new districts. Calif. Ed. Code § 1972 (Supp. 1966).

3/ Calif. Ed. Code §§ 2021-2023 (Supp. 1966).

4/ Calif. Ed. Code §§ 2091-2098 (Supp. 1966).

5/ Calif. Ed. Code §§ 2031-2036 (Supp. 1966).

6/ Calif. Ed. Code § 1974 (Supp. 1966).

To understand the way the law operates we can take the hypothetical situation of two existing districts wishing to combine into one larger district. Section 2031 of the California Code permits new districts to be formed by combining existing districts. The action for combining these districts is initiated by filing a petition with the superintendent of the county in which the districts are located. This petition must be signed by:

> (a) at least 25 percent of the registered electors residing in each of the districts proposed to be combined or,
>
> (b) The Governing Board of each of the districts proposed to be combined. 7/

After the petition is filed, the County Superintendent, within 20 days after the petition is received, must order an election in each of the districts. If a majority of the votes cast in each of the districts is in favor of the new district, it will be formed. 8/

Thus, in California, the burden of initiating proceedings for consolidation or reorganization rests with the voters in the particular areas involved. The California legislature also has established provisions for tax rates in these reorganized districts. 9/

7/ Calif. Ed. Code § 2022 (Supp. 1966).

8/ Calif. Ed. Code § 2023 (Supp. 1966).

9/ Calif. Ed. Code §§ 1791-1796 (Supp. 1966).

Illinois

Illinois law is similar to California's. It also provides that voters in particular school districts take the initiative in reorganizing school districts or changing school boundaries "by detachment, annexation, division, dissolution ... consolidation or any combination thereof."[10] A majority of the legal voters residing in each district affected, or two-thirds of the legal voters residing in the territory which is to be detached, or in each of the one or more districts proposed to be annexed or consolidated can begin proceedings by petitioning the county board of school trustees in the county affected. The board of education in these districts also may petition the county board to change district boundaries.[11]

If the change of boundaries is to occur in districts which are in two or more counties, concurrent action must be taken by the county boards of school trustees in both of the counties. Once again, a petition for change may be instituted either by the boards of the districts involved or by the voters residing in the communities concerned.[12]

10/ Ill. School Code § 7.1 (1965).

11/ Id.

12/ Ill. School Code § 7.2 (1965). Petitioners bear the cost of publishing notice of the hearing, any transcript taken at the hearing and if an appeal from the county board's decision is sought appellants bear the cost of preparing the record for appeal, Ill. School Code § 7.6 (1965).

Once a petition is filed the county board conducts a hearing on the petition, and at the conclusion of the hearing, the county superintendent has 30 days in which to either grant or deny the petition.[13/]

The law also provides that an appeal from an adverse decision of the board may be taken,[14/] and will be heard before the circuit court in the county in which the petition is filed with the county board.[15/]

13/ Ill. School Code § 7.6 (1965).

14/ Id.

15/ Ill. School Code § 7.7 (1965). Illinois also has legislation permitting contiguous territories having a population between 1500 and 500,000 and an assessed valuation of not less than $5,000,000 and bounded by school district lines, to organize into a community consolidated school district. A petition by 20 percent or 200 (whichever is less) of the voters residing within the territory may initiate such an action through a petition filed with the county board of trustees. Provisions also are made for the election of a board of education to represent such a district. As in the case of changes in boundaries, an election is required to establish this type of school district.

These community consolidated school districts must set forth the maximum tax rates for educational and building purposes the proposed district will be authorized to levy upon all of the taxable property in the district. This rate cannot exceed the combined existing maximum rate of any high school district and any elementary school district included in the territory of the proposed district. Ill. School Code §§ 11.1-11.6 (1965).

Illinois has established special provisions relating to cities having a population of more than 500,000. Under these provisions each city shall constitute one school district under the charge of a board of education.[16/] Among the powers delegated to the board in cities of this size is the power to "as soon as practicable, and from time to time thereafter change or revise existing subdistricts or create new subdistricts in a manner which will take into consideration the prevention of segregation and the elimination of separation of children in public schools because of color, race or nationality."[17/]

Indiana

Indiana has recently enacted a unique legislative scheme providing that:

> In any county or adjoining counties, any two [2] or more school corporations, [18/] joint schools, metropolitan school districts or township school districts, whether or not such consolidating school corporations are of the same or of a different character, may consolidate into one metropolitan school district. [19/]

16/ Ill. School Code § 34-2 (1965).

17/ Ill. School Code § 24-18 (1965). The Supreme Court of Illinois recently held that this provision, known as the Armstrong Act, was unconstitutional and that "programs to create equal educational opportunities must be administered without regard to race." Tometz v. Board of Education, Waukegan City School District No. 61, Ill. Sup. Ct., No. 40292 (June 22, 1967). On September 27, 1967, the Supreme Court granted a petition for rehearing which, in effect, permits the Court to reconsider this decision.

18/ A school corporation is defined as any "public school corporation of the state located in whole or in part in a county containing a civil city of the first class." Ind. Stat. Ann., tit. 28 § 28-2338(a) (Supp. 1967).

19/ Ind. Stat. Ann., tit. 28 § 28-2442 (Supp. 1967).

This consolidation can be accomplished in the following ways: (1) The governing body of each school corporation to be consolidated can adopt a resolution providing for the consolidation or, (2) in lieu of the adoption of the resolution in one or more of the school corporations to be consolidated, a number of registered voters equal to five percent of the number of votes cast for secretary of state at the last general election can sign and file a petition requesting consolidation with the governing body of the school corporation.[20/]

If there is a protest to the resolution filed within 30 days after its passage or if the governing body of the district or districts involved disapproves of the petition filed by the requisite number of voters, a referendum election will be held.[21/] This special election will be held in the entire proposed metropolitan district.[22/] The district created will be governed by a metropolitan board of education representative of the entire area involved, which will have the power to appoint a superintendent and to levy and collect taxes.[23/]

In the opinion of the Attorney General of Indiana a metropolitan school district will be formed if a majority of those voting approve of it even though a majority of the voters in one of the corporations to be included had voted against its formation.[24/]

20/ Ind. Stat. Ann., tit. 28 § 28-2442(a) (h) (Supp. 1967).

21/ Id.

22/ Ind. Stat. Ann., , tit. 28 § 28-2442(c) (Supp. 1967).

23/ Ind. Stat. Ann., tit. 28 § 28-2444-2451 (Supp. 1967).

24/ Ind. Ops. Atty. Gen., No. 31, p. 153 (1959).

Indiana also provides for the consolidation of any two or more school corporations whether towns, cities, townships, joint schools or consolidated schools.[25/] This consolidation may be accomplished by a resolution of the school trustees of the districts involved. Twenty percent or more of the legal voters residing in any of the school corporations may petition the school trustees of their respective corporation for an election to determine whether or not the majority of the voters in the school corporation favor the consolidation.[26/]

Until recently Indiana had specific provisions for cities of various classes based on population. Many of these provisions were repealed in 1967. In those cities in which these provisions are applicable, the schools in the city are made "school corporations," designated as school cities and are separate from the civil corporations of the same cities.[27/] These generally are second class cities.

The most comprehensive legislation of this type relates to schools in first class cities, those having a population of more than 300,000 (Indianapolis).[28/] In these cities the school corporation is to be coextensive with the corporate boundaries of the city.[29/]

25/ Ind. Stat. Ann., tit. 28 § 28-5901 (Supp. 1967).

26/ Ind. Stat. Ann., tit. 28 § 28-5902 (Supp. 1967).

27/ Ind. Stat. Ann., tit. 28 § 28-1837 (Supp. 1967).

28/ Ind. Stat. Ann., tit. 28 § 28-2301 to 28-2347 (Supp. 1967).

29/ Ind. Stat. Ann., tit. 28 § 28-2301 (Supp. 1967).

Provisions are made for cities falling into this category to annex territory from other corporations by joint resolution.[30] The annexation is effective unless a majority of the land owners in the annexed territory or the owners of 75 percent or more of the assessed valuation of the real estate in the annexed territory file an objection in the circuit or superior court of the county where the annexed territory is located.[31]

The statutes applying to these first class cities provides that their provisions "shall not be construed to repeal the act ... concerning the consolidation of two or more school corporations."[32]

Michigan

Michigan has perhaps one of the simplest reorganization schemes. School districts in Michigan are organized into districts of the first, second, third or fourth class.[33] These districts are then

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30/ Ind. Stat. Ann., tit. 28 § 28-2340 (Supp. 1967).

31/ Ind. Stat. Ann., tit. 28 § 28-2341 (Supp. 1967). The grounds on which a remonstrance can be filed are specified in the statute. One ground is that "The benefits to be derived from the annexation are out-weighed by its detriments taking into consideration the respective benefits and detriments to the schools and of the pupils residing in the acquiring school corporation, the losing school corporation and the annexed territory." Ind. Stat. Ann., tit. 28 § 28-2443 (Supp. 1967).

32/ Ind. Stat. Ann., tit. 28 § 28-2347 (Supp. 1967).

33/ Mich. Stat. Ann., tit. 15 § 15.3001 (1959). There also are some primary school districts which enroll less than 75 pupils. Mich. Stat. ann., tit. 15 § 15.3052 (Supp. 1965). A fourth class district enrolls more than 75 children and less than 2,400; a third class district, more than 2,400 and less than 30,000; a second class district, more than 30,000 and less than 120,000; and, a first class district, more than 120,000 pupils. Mich. Stat. ann., tit. 15 §§ 15.3052, 15,3102, 15.3142 and 15.3182 (Supp. 1965).

further organized on a county by county basis and the local districts in a particular county form the intermediate school district of the county.[34/]

Two or more adjoining intermediate districts can combine to form a single district upon approval of a majority of the voters of each constituent district of each of the intermediate districts.[35/] The procedure can be initiated by a petition signed by a number of registered voters of the constituent school districts of each intermediate district, equal in number to not less than five percent of the enrollment of each constituent district.[36/]

Constituent districts, except districts of the first and second class, also may consolidate. The consolidated district will then be a third or fourth class district depending upon its population.[37/] Once again, the procedure begins at the local level either by board resolution or by petition.[38/]

34/ Mich. Stat. Ann., tit. 15 § 15.3292(1) (Supp. 1965).

35/ Mich. Stat. Ann., tit. 15 § 15.3302(10) (Supp. 1965).

36/ Id.

37/ Mich. Stat. Ann., tit. 15 § 15.3401 (1959).

38/ Mich. Stat. Ann., tit. 15 § 15.3402 (1959).

New York

New York's law differs from any of those discussed before. For example, school district boundaries may be altered by district superintendents, with the consent of the school trustees of the affected districts and in school districts having a population of 4,500 or more, with the consent of the board of education involved.[39/]

If the trustees of any district affected refuse to consent, the district superintendent may make the alteration and the decision can be appealed to the State Commissioner of Education.

It has been held that "nearly unanimous opposition to the order by the residents of territory transferred and the fact no substantial advantages are to be gained by the projected change of boundaries, make necessary the vacating of the district superintendent's order altering boundaries."[40/] School districts also may be consolidated by the vote of qualified electors.[41/]

39/ N.Y. Educ. Code § 1507c (McKinney 1966).

40/ Op. Educ. Dept., 40 St.Dept. 229 (1931). See also Op. Educ. Dept., 53 St.Dept. 140 (1936).

41/ In order to consolidate, certain procedures must be followed:

(1) Two-thirds of the qualified electors of each two or more districts in which there are less than 15 qualified electors (or if there are 15 or more electors, 10 or more electors) sign a request for a meeting to be held to determine if consolidation shall take place.

(2) The consolidation proposal is submitted to the Commissioner of Education for approval, and if he approves, the trustees or board of education must give public notice that a meeting of qualified electors will be held to vote upon the question of consolidation.

(3) A resolution to consolidate the districts may be adopted at the meeting if the requisite number of electors are in favor of the proposal.

(4) The district superintendent then issues an order consolidating such districts. N.Y. Educ. Code §§ 1510-1513 (McKinney 1966).

In addition, the qualified voters of a school district, contiguous to the city school district of a city with less than 125,000 inhabitants, can adopt a proposition to consolidate their school district with such city school district. If the board of education of the city district approves this consolidation by resolution, the Commissioner of Education may order such consolidation.[42/]

The Commissioner of Education in New York has a unique office. He has certain powers not found in any of the other states discussed. He has the discretionary power to enlarge city school districts by consolidating city school districts of cities of less than one hundred twenty-five thousand inhabitants with an area or areas contiguous to the city school district.[43/]

The law does provide, however, that such areas shall not be consolidated with such city school district until a majority of the qualified voters of the area adopt a proposition to consolidate with the city school district, and until the board of education of the city school district has consented to such consolidation by a duly adopted resolution.[44/]

42/ N.Y. Educ. Code § 1524 (McKinney 1966).

43/ N.Y. Educ. Code § 1526 (McKinney 1966).

44/ Id.

If the proposition to consolidate an area with a city school district is adopted, the Commissioner may, by order, consolidate such area or areas, and all of the school districts and parts of school districts included become parts of the city school district.[45/] The courts in New York have held that Section 1526 is not unconstitutional because the voters of the city school district are not permitted to vote on the issue of consolidation.[46/]

It should be noted that the six largest school districts in New York state cannot consolidate with other districts.[47/] There are no statutory provisions which authorize consolidation for these "dependent" districts in which the boundaries are coterminous with cities and the school and city finances are integrated.

The one exception to the general rule that there are no statutory provisions for consolidation by the "big six" districts is Section 715 of the General Municipal Law of New York State which provides that if a city annexes territory, the Commissioner of Education also must annex that territory for school purposes.

45/ N.Y. Educ. Code § 1526(14)(15) (McKinney 1966).

46/ Janonsky v. Parsons, 285 App.Div. 601, 136 N.Y.S.2d 676 (1955).

47/ These six districts are New York, Buffalo, Rochester, Syracuse, Yonkers, and Albany.

Pennsylvania

Pennsylvania also has some unique features in its reorganization statutes. In Pennsylvania any two or more school districts may combine to create a larger district.[48] A majority of the board of school directors of the districts seeking to combine are each required to adopt a resolution outlining the areas to be combined and file this resolution with the Superintendent of Public Instruction who either approves or disapproves the consolidation.[49] An application which is not approved must be returned to the applying districts for resubmission in accordance with any recommendations attached.[50]

Whenever two or more school districts are consolidated into a school district of the third or fourth class[51] approval must be given either by the State Department of Public Instruction (if no hearing is requested by the affected school districts) or by the State Council of Basic Education (if a hearing is so requested) -- the council to consider whether the creation of such new district is desirable and "whether the welfare of the pupils within the territory affected thereby will be promoted by the creation of such district ... ."[52]

48/ Pa. Stat. Ann., tit. 24 § 2-224 (Supp. 1966). This provision complements the compulsory reorganization provisions discussed infra.

49/ Id.

50/ Id.

51/ There are five classes of school districts: A first class district must have a population of 1,500,000 or more; a first class A district is one with a population of 500,000 or more, but less than 1,500,000. A district of the second class has a population of 30,000 or more, but less than 500,000. A district of the third class has a population of 5,000 or more, but less than 30,000, and a district of the fourth class shall have a population of less than 5,000. Pa. Stat. Ann., tit. 24 § 2-202 (Supp. 1966).

52/ Pa. Stat. Ann., tit. 24 § 2-228(a) (Supp. 1966).

In 1963, the General Assembly determined that the then existing system of more than 2,000 school districts was "incapable of providing adequate education and appropriate training for all the children of the Commonwealth ... ."[53] and it established procedures and provided strandards and criteria under which school directors, district administrators, county boards of school directors and county administrators "shall have the power and bear the duty of determining the appropriate administrative units to be created in each county" to provide for the education and training of the Commonwealth's children.[54]

The State Board of Education was authorized to adopt standards for the approval of administrative units, taking into consideration such factors as "topography, pupil placement, community characteristics, transportation of pupils, use of existing school buildings, existing administrative units, potential population changes and the capability of providing a comprehensive program of education."[55]

53/ Pa. Stat. Ann., tit. 24 § 2-290 (Supp. 1966). Under the provisions of this law the number of school districts in Pennsylvania has been reduced to 500. Interview with Mr. Warren G. Morgan, Assistant to the Chief Counsel, Pennsylvania State Department of Education, Oct. 13, 1967. Many of these cases are now in litigation.

54/ Id.

55/ Pa. Stat. Ann., tit. 24 § 2-291 (Supp. 1966).

If the Council of Basic Education has not approved a county plan prior to January 1, 1965, the Department of Public Instruction is authorized to prepare and place on the Council's agenda a plan of organization of administrative units and when approved by the Council such plan is to be deemed the approved plan of organization of administrative units for the county.[56] Any school district which deems itself aggrieved by a plan of organization approved by the Council may appeal to the State Board of Education.[57]

56/ Pa. Stat. Ann., tit. 24 § 2-295 (Supp. 1966).

57/ Id.